IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

GEMINI IP, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:07-cv-00521-RAS**
	§	
LANDESK SOFTWARE, INC., et. al.,	§	
	§	
Defendants.	§	
	§	
	§	**JURY TRIAL DEMANDED**
	§	
	§	
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	§	
	§	

DEFENDANTS' AT&T SERVICES, INC. AND SBC INTERNET SERVICES, INC. ANSWER TO GEMINI'S AMENDED COMPLAINT

Defendants AT&T Services, Inc. ("AT&T Services") and SBC Internet Services, Inc. d/b/a AT&T Internet Services ("SBC Internet Services") (collectively "AT&T") answer Gemini IP, LLC's ("Gemini") Complaint for patent infringement as follows:

I. AT&T SERVICES' AND SBC INTERNET SERVICES' ANSWER

PARTIES

1. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint, and thus denies same.

2. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint, and thus denies same.

3. AT&T is without knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 3 of the Complaint, and thus denies same.

4. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint, and thus denies same.

5. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint, and thus denies same.

6. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint, and thus denies same.

7. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint, and thus denies same.

8. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint, and thus denies same.

9. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint, and thus denies same.

10. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint, and thus denies same.

11. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint, and thus denies same.

12. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint, and thus denies same.

13. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and thus denies same.

14. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint, and thus denies same.

15. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint, and thus denies same.

16. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint, and thus denies same.

17. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint, and thus denies same.

18. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint, and thus denies same.

19. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint, and thus denies same.

20. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and thus denies same.

21. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint, and thus denies same.

22. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint, and thus denies same.

23. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint, and thus denies same.

24. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint, and thus denies same.

25. AT&T Services and SBC Internet Services have been substituted for AT&T, Inc. in this matter and thus deny that AT&T, Inc. is a current defendant. AT&T Services is a Delaware corporation having a principal place of business at 208 S. Akard Street, Dallas, TX,

75202. AT&T Services has appointed CT Corporation Systems located at 350 North St. Paul Street, Dallas, TX 75201 as its agent for service. SBC Internet Services is a Delaware corporation having a principal place of business at 2623 Camino Ramon, San Ramon, CA 94583. SBC Internet Services has appointed CT Corporation Systems located at 350 North St. Paul Street, Dallas, TX 75201 as its agent for service.

26. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint, and thus denies same.

27. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint, and thus denies same.

JURISDICTION AND VENUE

28. AT&T admits that the Complaint constitutes an action for alleged patent infringement under Title 35 of the United States Code and that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

29. AT&T admits that Gemini purports to base venue under 28 U.S.C. §§ 1391(c) and 1400(b), but denies that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). AT&T denies that it has committed any acts of infringement or continues to commit acts of infringement in this District. AT&T denies all remaining allegations contained in Paragraph 29 as they pertain to AT&T. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 relating to other defendants, and therefore denies same.

30. AT&T does not contest that it is subject to the Court's general personal jurisdiction for the purposes of this action. AT&T denies that it has committed any acts of infringement or continues to commit acts of infringement in this District. AT&T is without

knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of Paragraph 30 of the Complaint as they pertain to AT&T, and thus denies the same. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 relating to other defendants, and therefore denies same.

COUNT I
(Alleged Infringement of United States Patent No. 6,177,932)

AT&T incorporates by reference as if fully set forth herein its responses to Paragraphs 1-30 of the Complaint.

31. AT&T admits that, on its face, United States Patent No. 6,177,932 ("the '932 Original Patent") and its associated re-examination certificate ("the '932 Reexam Certificate") (collectively "the '932 Patent") state as its title "Method and Apparatus for Network Based Customer Service," that Exhibit A appears to be a copy of the '932 Original Patent and that Exhibit B appears to be a copy of the '932 Reexam Certificate. AT&T admits that, on its face, the '932 Original Patent lists an issuance date of January 23, 2001 and the '932 Reexam Certificate lists an issuance date of September 14, 2010. AT&T is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 31 of the Complaint.

32. AT&T admits that, on its face, the '932 Original Patent lists Frank A. Galdes and Mark A. Ericson as inventors.

33. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint, and thus denies same.

34. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint, and thus denies same.

35. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint, and thus denies same.

36. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint, and thus denies same.

37. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint, and thus denies same.

38. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint, and thus denies same.

39. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint, and thus denies same.

40. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 of the Complaint, and thus denies same.

41. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint, and thus denies same.

42. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint, and thus denies same.

43. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 of the Complaint, and thus denies same.

44. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 of the Complaint, and thus denies same.

45. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint, and thus denies same.

46. AT&T is without knowledge or information sufficient to form a belief as to the

truth of the allegations in Paragraph 46 of the Complaint, and thus denies same.

47. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint, and thus denies same.

48. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint, and thus denies same.

49. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint, and thus denies same.

50. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint, and thus denies same.

51. AT&T denies the allegations contained in Paragraph 51 of the Complaint.

52. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Complaint, and thus denies same.

53. To the extent Paragraph 53 contains any allegation against AT&T, AT&T denies those allegations.

54. AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint, and thus denies same.

55. AT&T denies the allegations in Paragraph 55.

56. AT&T denies the allegations in Paragraph 56.

GEMINI'S ALLEGED REMEDIES AND PRAYER

As to AT&T, AT&T denies that Gemini is entitled to any of the relief sought in the Complaint. As to the other defendants, AT&T is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the relief specified in the Complaint, and therefore denies the same.

II. ADDITIONAL DEFENSES

57. For its additional defenses, AT&T incorporates by reference as if fully set forth herein its responses to Paragraphs 1-56 to Gemini's Complaint. AT&T asserts these additional defenses without admitting that AT&T bears the burden of proof on any of them.

FIRST ADDITIONAL DEFENSE
(Invalidity)

58. On information and belief, the claims of the '932 Patent are invalid for failure to comply with the conditions and requirements for patentability specified in Title 35 U.S.C., including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 112.

SECOND ADDITIONAL DEFENSE
(Prosecution History Estoppel)

59. Under the doctrine of prosecution history estoppel, Gemini is estopped from asserting the doctrine of equivalents as to the arguments and amendments made during prosecution of the patent application that issued as the '932 Original Patent and during prosecution of the '932 Patent's reexamination certificate.

THIRD ADDITIONAL DEFENSE
(Non-Infringement)

60. AT&T does not infringe and has not infringed, literally or under the doctrine of equivalents, any valid and enforceable claims of the '932 Patent, either directly or indirectly, such as, contributorily or by inducement.

FOURTH ADDITIONAL DEFENSE
(Acquiescence, Estoppel, Laches, Waiver)

61. Gemini is barred by the doctrines of acquiescence, estoppel, laches, and/or waiver from enforcing the '932 Patent against AT&T.

FIFTH ADDITIONAL DEFENSE
(Limitations on Damages)

62. Gemini's ability to recover damages under 35 U.S.C. §§ 286-287 is limited.

63. Gemini is precluded from seeking recovery for any allegedly infringing acts occurring more than six years before the filing of the Complaint.

SIXTH ADDITIONAL DEFENSE
(Limitations on Costs)

64. Gemini is precluded from recovering costs under 35 U.S.C. § 288.

SEVENTH ADDITIONAL DEFENSE
(No Entitlement to Injunctive Relief)

65. Gemini is not entitled to injunctive relief as, at a minimum, it has no irreparable injury and it has an adequate remedy at law for AT&T's alleged infringement.

EIGHTH ADDITIONAL DEFENSE
(Intervening Rights)

68. Gemini's claims for damages and relief are barred, in part, by the doctrine of intervening rights including that set forth in 35 U.S.C. §§ 307 and 252 (as referenced in 35 U.S.C. § 307).

III. RESERVATION OF RIGHTS

AT&T continues to investigate this matter and reserves the right to amend its Answer and add counterclaims and any additional defenses not presented herein, including, but not limited to those defenses revealed during discovery.

IV. AT&T'S COUNTERCLAIMS

AT&T makes the following counterclaims against Gemini:

PARTIES

1. AT&T Services, Inc. ("AT&T Services") is a Delaware corporation having a

principal place of business at 208 S. Akard St., Dallas, Texas 75202.

2. SBC Internet Services, Inc. d/b/a AT&T Internet Services ("SBC Internet Services") (collectively with AT&T Services "AT&T") is a Delaware corporation having a principal place of business at 2623 Camino Ramon, San Ramon, CA 94583.

3. According to its amended complaint, Gemini IP, LLC ("Gemini") is a Texas limited liability company with its principal place of business at 207 C North Washington Avenue, Marshall, Texas 75670.

BACKGROUND

4. According to its amended complaint, Gemini alleges it is the owner by assignment of United States Patent No. 6,177,932 ("the '932 Original Patent") and its associated re-examination certificate ("the '932 Reexam Certificate") (collectively "the '932 Patent"), which is titled "Method and Apparatus for Network Based Customer Service."

5. Gemini has alleged that AT&T has infringed, and continues to infringe, the '932 Patent.

JURISDICTION AND VENUE

6. This is an action for a declaration that each and every claim of the '932 Patent is invalid, unenforceable, and not infringed pursuant to the Patent Laws of the United States, 35 U.S.C. § 101, *et seq*. Accordingly, subject matter jurisdiction of this Court exists under the Federal Declaratory Judgment Act, Title 28, United States Code §§ 2201 and 2202, and under Title 28, United States Code §§ 1331 and 1338.

7. An actual, substantial, and continuing justiciable controversy exists between AT&T and Gemini with respect to which AT&T requires a declaration of their rights by this Court. Specifically, the controversy relates to the invalidity, unenforceability, and non-

infringement of the '932 Patent and to Gemini's right to threaten and/or maintain a suit against AT&T for alleged infringement of the '932 Patent. Gemini has chosen this venue to enforce its patent. Venue is proper in this Court and judicial district for counterclaims, pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FIRST COUNTERCLAIM
(Declaratory Judgment of Non-Infringement of the '932 Patent)

8. AT&T realleges and incorporates by reference the allegations of Paragraphs 1-7 above.

9. This is an action for declaratory judgment of non-infringement of any and all valid and enforceable claims of the '932 Patent.

10. Gemini alleges that AT&T has and is infringing directly, literally, jointly, equivalently, and/or by inducing or contributing to the infringement of one or more claims of the '932 Patent, that such alleged infringement has thereby damaged Gemini, and that such alleged infringement, unless enjoined, will continue to damage Gemini.

11. AT&T has not infringed and is not infringing directly, jointly, equivalently, and/or by inducing or contributing to the infringement of any valid and enforceable claim of the '932 Patent, either literally or under the doctrine of equivalents.

12. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between AT&T and Gemini as to whether AT&T has infringed or is infringing any valid and enforceable claim of the '932 Patent.

13. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., AT&T requests a judicial determination and declaration of the respective rights and duties of the parties on the disputes recited in Counterclaim Paragraphs 8-12 above. Such a determination and

declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties in this regard.

SECOND COUNTERCLAIM
(Declaratory Judgment of Invalidity of the '932 Patent)

14. AT&T realleges and incorporates by reference the allegations of Counterclaim Paragraphs 1-13 above.

15. This is an action for declaratory judgment of invalidity and/or unenforceability of any and all claims of the '932 Patent.

16. The claims of the '932 Patent are invalid and/or unenforceable for failure to comply with one or more of the conditions for patentability in Title 35 of the United States Code, including 35 U.S.C. §§ 101, 102, 103, and/or 112.

17. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between AT&T and Gemini as to whether there exists any valid claim of the '932 Patent.

18. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., AT&T requests a judicial determination and declaration of the respective rights and duties of the parties on the disputes recited in Counterclaim Paragraphs 14-17 above. Such a determination and declaration are necessary and appropriate at this time so the parties may ascertain their respective rights and duties in this regard.

EXCEPTIONAL CASE

19. AT&T realleges and incorporates by reference Counterclaim Paragraphs 1 through 18 above.

20. This case is exceptional under 35 U.S.C. § 285.

V. AT&T'S PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully pray for the following relief:

1. That this Court declare and decree that AT&T has not infringed and is not infringing, directly, jointly, equivalently, willfully, contributing to the infringement of, or inducing the infringement of any of the claims of the ’932 Patent by any product or service of AT&T.

2. That this Court declare and decree that the claims of the ‘932 Patent are invalid.

3. That this Court find that this is an exceptional case under the provisions of 35 U.S.C. § 285 in favor of AT&T, and award both its costs and reasonable attorney’s fees incurred as a result of this action; and

4. That AT&T be granted such further relief as the Court deems just and proper.

Dated: January 26, 2011

Respectfully submitted,

/s/ David R. Clonts

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ATTORNEY FOR DEFENDANTS
AT&T Services and SBC Internet Services

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by email this 26th day of January 2011.

/s/ David R. Clonts______
David R. Clonts